IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3939 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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HEAD MASTER, GURUKUL VIDYA VIHAR - Petitioner(s)
Versus
COLLECTOR, MEHSANA & ORS. - Respondent(s)

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Appearance :
Shri Bharat Jani for Petitioner(s).
Shri Dipen Desai, Assistant Government Pleader for Respondent(s) : 1.
Shri Prakash Jani for Respondent(s) : 2.
Shri N.V. Anjaria for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/04/2007

ORAL JUDGMENT

By way of this Writ Application under Articles 226 and 227

of the Constitution of India, the petitioner seeks to challenge the allotment of land for Shop No.65 in favour of respondent No.2 on the ground that such allotment of land and construction over it, would adversely affect free flow of the traffic and would lead to and may create accident prone zone. It is also submitted that the allotment of land, in fact, was with an ulterior motive to oblige someone. During the pendency of this Writ Application, certain interim orders were issued, therefore, the shop, which was constructed upto the plinth and roof level, without surrounding walls, stands as it is.

2. On the last date, this Court required the respondents to inform this Court as to what exactly was the location and situation of the spot. The respondent-Municipality has filed certain photographs, which are at Page Nos.98 to 105.

3. Shri Jani, learned Counsel for the petitioner, after taking me through the map of the spot, submits that in between Shop Nos.65 and 64, there exists a street, which goes to Raliyat Nagar, and just behind Shop No.65, there is still a road which goes towards the college road. He also submits that adjoining the said road, Gurukul Vidya VVihar School, orphanage, temple, hospital and primary school are on one side, while on the other side, there is one high school. He submits that allotment of the land under Shop No.65, in fact, was causing disturbance in the free flow of traffic because people, instead of taking a turn from the main road towards the college road, are now required to go beyond Shop No.65 and thereafter, have to take a right turn. His submission is that respondent No.2 could be allotted some land adjoining to Shop No.64, which is on the other side of Raliyat Nagar Road and if that is so done, it would not create or cause any problem either to the traffic or anyone else.

4. Shri P.K. Jani and Shri N.V. Anjaria, learned Counsel for respondent Nos.2 and 3, have opposed the petition submitting, *inter alia*, that from the photograph at page No.98 (Annexure-III), it would clearly appear that Shop No.65 is situate on the left side of Mangalam Cycle Stores; further left to Shop No.65 is a *pan bidi* shop, which, in fact, is an encroachment, but, the said encroacher has already taken stay from the Civil Court. They submit that adjoining to the said shop, there exists electrical poles which carry high tension lines and even behind those poles, there are other electricity poles. According to them, even if Shop No.65 is demolished, it would not serve any purpose because in long many years, number of constructions have been made and high propensity electricity lines have been installed. They submit that if any land near Shop No.64 is allotted to respondent No.2, the allotment will have to be made on the main road, which, in fact, would create a permanent problem for the people, who wish to go to Raliyat Nagar. From the photographs at Page Nos.98 and 99, it clearly appears that adjoining Mangalam Cycle Stores (Shop No.66), there is unfinished construction of Shop No.65, left to which, there is a *pan bidi* shop, adjoining which the electrical poles have already been erected. From Page No.99, the same position would appear. While from Page No.100, it would appear that just behind the high voltage line, there are two more electrical cement poles. It would also appear that Shop No.64 is abutting the road leading to Raliyat Nagar Society. If any shop is allotted to respondent No.2 next to the shop of Shop No.64, it would virtually close half of the entry gate of Raliyat Nagar Society.

5. From the other photographs also, it would appear that when Shop No.65 was allotted to respondent No.2, the plots were open, there was no high voltage line or other lines. At this stage, the allotment of

Shop No.65 cannot be cancelled, especially, in view of the fact that other constructions have been raised and but for the petitioner, no person of the locality comes and says that construction of Shop No.65 would create disturbance to the free flow of traffic. In any case, the petitioner cannot be allowed to challenge the order of allotment made by the Collector in favour of respondent No.2.

6. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

[R.S.Garg, J.]

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